Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Lifeline and Link Up Reform and Modernization	)	WC Docket No. 11-42
	)	
Federal-State Joint Board on Universal Service	)	CC Docket No. 96-45
	)	
Lifeline and Link Up	)	WC Docket No. 03-109

COMMENTS OF AMERICAN PUBLIC COMMUNICATIONS COUNCIL, INC.

The American Public Communications Council, Inc. ("APCC") files these comments in response to the March 4, 2011 Notice of Proposed Rulemaking in the above-captioned proceedings ("NPRM").[1] APCC is the national trade association representing the interests of independent (i.e. non-LEC) payphone providers. APCC has some 750 members who operate the majority of existing payphones, and all of whom are all sole proprietorships or small businesses.

APCC is participating in this proceeding in light of the petition it recently filed asking the Commission to initiate a rulemaking to make Eligible Telecommunications Carriers ("ETCs") providing payphone lines eligible for Lifeline support from the Universal Service Fund for those lines at a rate equal to the Combined Tier 1, Tier 2 and Tier 3 Level.[2] Payphones are a critical

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[1] *Lifeline and Link Up Reform and Modernization*, FCC Dkt. No. 11-42, et. al, Notice of Proposed Rulemaking, FCC 11-32 (Released March 4, 2011).

[2] *See* American Public Communications Council, *Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service*, CC Docket 96-45 (filed Dec. 6, 2010) ("*Petition*"). A copy of the *Petition* is attached hereto and the *Petition* is hereby incorporated herein by reference. *See also, Wireline Competition Bureau Seeks Comment on American Public Communications Council Petitions Regarding Universal Service and Payphone Issues,* CC Dkt. No. 96-45; WC Dkt. No. 03-109, Public Notice (DA 10-2630, Issued December 16, 2010).

component of universal service, providing access to critical calling services to millions of Americans and ready, reliable access to the public network in times of crisis and during emergencies. Yet payphones are themselves in a state of crisis, with the deployed base having fallen by more than 75% over the last ten years, and with payphones in danger of disappearing. APCC demonstrated in the Petition that the Commission can and should prevent that from occurring—and meet its mandate under Section 276 of the Communications Act to ensure the "widespread deployment" of payphones—by providing universal service Lifeline support for payphone line service. In an *Emergency Petition*,[3] filed contemporaneously with the *Petition*, APCC further demonstrated that the Commission should grant the relief requested by the *Emergency Petition* on an interim basis, pending resolution of the rulemaking, in order to stem the precipitous decline in payphones before it is too late.

As the Commission considers in this proceeding the changes to the Lifeline program contemplated in the NPRM, it must take account of the opportunity to advance the goals of the program presented by the *Petition*. As APCC services explained in the *Petition*, Payphones are the epitome of universal service. Payphone service is an "on demand dial-tone/pay-per use" reliable high-quality service, available twenty-four hours a day, seven days a week, 365 days a year users without advance subscription. For the many millions of people who do not have either a landline or a mobile phone, payphones are the only way of making calls. For the 18% of American adults who lack a mobile phone—a figure that jumps to 29% of adults with a household income of less than $30,000—payphones represent the only way of making emergency and other calls when away from home or work. And, *unlike every other form of*

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[3] *See* American Public Communications Council, *Emergency Petition for Interim Relief to Prevent the Disappearance of Payphones*, CC Docket 96-45 (filed Dec. 6, 2010). A copy of the *Emergency Petition* is attached and the *Emergency Petition* is hereby incorporated herein by reference.

communication available to the public, users are not required to make an initial investment in equipment, await activation of the service or pay recurring monthly charges. Users have the option of paying for calls with coins or by use of calling cards, prepaid cards or other access code arrangements. Emergency 911 calls are free of charge twenty-four hours a day, seven days a week across the nation's public payphone base. Users can also place calls to 800 subscribers at no charge to the caller. Lifeline support for payphone lines thus clearly advances the primary goal of the Lifeline program articulated in the NPRM—"to preserve and advance the availability of voice service for low-income Americans." NPRM ¶ 34.

The Commission's second stated goal in the NPRM is to "review the [Lifeline] program holistically . . . and ensure that it is on a firm footing to efficiently and effectively achieve its statutory purposes." NPRM ¶ 3. The Commission cannot meet that goal without addressing the *Petition.* As the Commission recognized, there are limits to USF funding and the Commission has a statutory obligation to balance meeting the program's goals with "over-burdening the consumers and businesses that ultimately support USF through fees on their phone bills." NPRM ¶ 144. As the Commission recognized, this in turn "requires balancing competing demands" on the fund in order to not only promote universal service but do so efficiently, maximizing the return of ever dollar into the fund. NPRM ¶ 37. Moreover, the Commission recognized that preserving access to affordable voice services remains vital to consumers. NPRM ¶ 3.

As demonstrated in the *Petition*, Lifeline support for payphone line service can be implemented at a relatively modest cost and has very real efficiencies as compared to the cost of some other forms of support, e.g,, mobile support, in a variety of circumstances. Whereas each dollar spent of support of mobile provides only limited calling to a single subscriber; each dollar of support for payphone line service provides service to dozens of users on an unlimited basis. .[4] And providing Lifeline support to payphone lines results in none of the inefficiencies that the Commission noted with respect to mobile Lifeline support. *See* NPRM ¶ 252. Moreover, as demonstrated in the *Petition,* providing support for other forms of service, e.g., mobile service, without providing support for payphone service, can have the perverse effect of accelerating the removal of payphones,[5] as well as violating the Commission's policy prescription in favor of competitive neutrality.[6]

Moreover, for many lower-income Americans, payphones are a far more affordable means of making calls than are mobile phones. The prepaid plans utilized by many of those users have relatively high per-minute charges.. By contrast, payphones typically offer unlimited local calling for 50 cents or less per call. Thus, for all but the shortest local calls, payphones are far more cost effective than the prepaid mobile plans typically used by lower-income subscribers. Long Distance calling from payphones is similarly cost effective for low income subscribers as compared to typical prepaid mobile rates.[7] This is particularly true for the millions of Americans who regularly call friends and families abroad, for whom international prepaid calling cards offer a dramatically less expensive alternative than placing international calls from their prepaid mobile phones. Perhaps most importantly, with respect to vital 8YY toll free calling to government agencies and non-profit community service organizations by low income consumers, this access is provided free of charge to callers from payphones. Mobile providers, by contrast,

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[4] *See, e.g., Petition* at 21-22.

[5] *Id.* 19-22, 27-29

[6] *Id.* 22. The Commission has recognized that as it moves ahead in implementing reforms in the USF, it must be vigilant to ensure competitive neutrality. *See Connect America Fund et. al,* Notice of Proposed Rulemaking, ¶ 82, WC Dkt. No. 10-90 (Released February 9, 2011).

[7] Many public payphones offer call-anywhere in the U.S. price plans for 10 cents/minute or less.

charge their regular per-minute rates for 8YY calls, which can be quite long and utilize a substantial portion of the available minutes. Payphones thus are ideally suited to meeting the third stated goal of the Lifeline program—ensuring that "low-income consumers can access supported services at just, reasonable, and affordable rates." NPRM ¶ 36.

Accordingly, as the Commission considers how to evolve the Lifeline program in this proceeding, it must address the *Petition* and meeting the goals of the program through support for payphone lines. If the Commission has not acted on the *Petition* by the time it is ready to act in the instant docket, it can and should use this proceeding as a vehicle for acting on—and granting—the *Emergency Petition.* At the very least, as it decides how to a apportion the limited funds available among the various means of meeting and advancing universal service, the Commission must consider the merit of and weigh the efficiencies and other benefits of Lifeline support for payphone lines as compared to Lifeline support for mobile and other forms of service.[8]

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[8] In its Comments on the *Petition*, USTA was not opposed to the possibility of Lifeline support for payphone lines, but believed that the Commission should resolve the issue of Lifeline support for payphone lines as part of a comprehensive effort to review the Lifeline Program. *See* Comments of the United States Telecom Association, CC Docket 96-45 (filed Jan. 18, 2011). The instant proceeding presents the Commission with the opportunity to do exactly that.

ATTACHMENT 1

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules	)	________________
to Provide Universal Service Lifeline	)	
Support for Payphone Line Service	)	
	)	

EMERGENCY PETITION FOR INTERIM RELIEF TO PREVENT THE DISAPPEARANCE OF PAYPHONES

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Provide Universal Service Lifeline Support for Payphone Line Service	))))	______________

EMERGENCY PETITION FOR INTERIM RELIEF TO PREVENT THE DISAPPEARANCE OF PAYPHONES

The American Public Communications Council ("APCC") hereby petitions the Federal Communications Commission to grant emergency relief on an interim basis to halt the precipitous decline in the number of payphones serving the country. Payphones play a critical universal service role by providing access to telephone service for millions of Americans without phones of their own and providing important communications infrastructure in times of disaster or emergencies. APCC requests that the Commission immediately declare Eligible Telecommunications Carriers ("ETCs") providing payphone lines eligible for Lifeline support from the Universal Service Fund for those lines at the same level of dollar support as provided at the combined Tier 1, Tier 2, and Tier 3 Level.

APCC is simultaneously filing a Petition for Rulemaking to Provide Lifeline Support to Payphone Line Service seeking permanent relief along the same lines. The Commission must, however, act on an interim basis to provide immediate relief before the decline in payphones becomes irreversible as payphone deployment ceases to be a viable business. The need has been made all the more pressing by the Commission's recent decisions extending Universal Service support to mobile phones. While otherwise laudable, these actions have had the unintended consequence of hastening the removal of payphones, which are the most efficient means of providing service to many who would otherwise go without service.[1] Absent immediate Commission action to correct any damage it inadvertently has caused, payphones could cease to be a viable business and it would be too late to save the nation's remaining payphones.

I. THE NEED FOR IMMEDIATE EMERGENCY ACTION

In 1996 Congress enacted Section 276 of the Communications Act, which directed the Commission to "ensure the widespread deployment of payphone services to the benefit of the general public."[2] In 1999, there were over 2 million payphones serving the country, and the Commission found that deployment level "most appropriately satisfies Congress's stated goal" of ensuring widespread deployment of payphones,[3] consistent with the "universal service function that payphones provide to those who cannot otherwise afford telephone service."[4] Indeed payphones provide reliable, high quality on demand, always on service to a universal class of users on 24/7/365 basis without the need for advance subscription or equipment purchase or rental, with free 911 and TRS calling.

Since the Commission's finding, however, the number of payphones has plummeted. There are now less than 475,000 payphones left in the entire country. In other words, the number of payphones has fallen to less than a quarter of the amount the Commission found was sufficient to meet its statutory mandate, even as the number of households without any kind of

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[1] APCC estimates that as many as 750,000,000—and perhaps as many as one billion—calls are made from payphones every year.

[2] 47 U.S.C. § 276.

[3] *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Third Report and Order, 14 FCC Rcd 2545, ¶ 143 (1999).

[4] *Access Charge Reform*, 18 FCC Fcd 12626, ¶ 8 (2003).

phone has remained virtually unchanged.[5] It is thus apparent that the Commission has not been able to fulfill the mandate to ensure widespread deployment.

Moreover recent actions that the Commission has taken are directly contradictory to that mandate in that they can only serve to hasten the removal of the nation's remaining payphones. Beginning in 2008, the Commission has in several cases forborne from statutory requirements and provided substantial Universal Service Fund (USF) subsidies for free mobile phone service.[6] The Commission did so without considering the devastating and unforeseen impact on payphone deployment nationwide that its actions could have.

Since the FCC decided to allow pure reseller mobile carriers to provide USF eligible recipients with free mobile phones, payphones have declined from over 800,000 phones to less than 475,000 nationwide. The decline has been exaggerated in those states in which larger numbers of free mobile phones have been provided through USF support of mobile service. For example, in Florida, where the number of free mobile phones has increased to 400,000 (at a cost in Florida alone of over $4 million per month to the USF program) in just two years, the number of payphones has dropped precipitously from over 34,000 in 2008 to about 16,000 today – a decline of over 50 percent. As more mobile providers become eligible for funding and more states adopt this program, the trend of payphone loss will continue throughout the country. In the last few months alone, the FCC issued orders that clear the way for several additional carriers to provide this service[7] and more and more states are implementing the program. Over half the

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[5] In 1997 according to FCC data, 6 million households were without a phone; in 2009 that number is 5,170,000.

[6] *See, e.g. Virgin Mobile USA, L.P.*, 24 FCC Rcd 3381 (2009), *TraceFone Wireless, Inc.*, 23 FCC Rcd 6206 (2008).

[7] *See Conexions Petition for Forbearance*, WC Docket No. 09-197, FCC 10-178 (Oct. 1, 2010); *Telecommunications Carriers Eligible for Universal Service Support,* 25 FCC Rcd 10510

states including Massachusetts, New Jersey, West Virginia, Virginia, Michigan and Georgia have programs in place to provide free mobile phone service through the USF program.

APCC does not take issue with the Commission's decision to subsidize mobile phone service. Having done so, however, the Commission must act immediately to ameliorate the unintended impact that decision has had on payphones and payphone users. Payphones provide an important service to many Americans, and they remain a vital part of our communications system in times of emergency. If the Commission does not act on an emergency basis to halt the disappearance of payphones, there is every reason to believe that they will soon be gone altogether. The result will be a crisis in communications for the millions of Americans, most especially those in lower-income brackets who must rely on payphones for access to critical calling services.

Lifeline recipients are often the same lower income individuals who most rely on and use payphones. Each time a Lifeline eligible person receives a free mobile phone, he or she will use that mobile phone instead of a payphone, at least until the minutes run out. Assuming that the person received 100 free minutes, it is reasonable to think that most if not all of the minutes are being substituted for calls that had been made on a payphone. If a typical payphone needs 100 calls per month to be profitable and survive, for example with 40 repeat customers who each make two calls a month, and 20 one-time customers, it is easy to see how when even one or two of those customers is provided a prepaid phone and stops using the payphone, the payphone can no longer cover its costs, a major part of which is the payphone line service, and will be removed. This negatively impacts the other 58 or 59 payphone users who did not receive a

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(2010); *i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, 25 FCC Rcd 8784 (2010).

mobile phone and may even negatively impact the mobile phone recipients when they run out of minutes if they can't afford to buy additional minutes at the high pricing offered by the carriers.

Moreover, this example illustrates why Lifeline support for payphone line service can be far more efficient than support for mobile phones. A mobile phone is provides service to only one, or at the most two, people. By contrast, Lifeline support for a single or a few payphone lines would allow the deployment of payphones for the 58 or 59 payphone users who are left without service as a result of the subsidy to the mobile provider.[8]

Allowing the deployment of mobile phone service through Lifeline support without looking at this negative impact is contrary to the goals of Universal Service and to the FCC's congressional mandate to ensure widespread deployment of payphones. The Commission needs to take immediate emergency action to arrest the decline of payphones by providing Lifeline support for payphone line service, which can be accomplished at a relatively modest cost to the overall Fund. Simultaneously, the Commission can begin a proceeding to evaluate the best long term approach to this problem, but the bleeding must be stopped immediately before payphones disappear altogether. Because of the high upfront costs that installing a payphone entails, once a payphone is removed, it is highly unlikely that it would ever be economic to reinstall the payphone.

At the moment, there are less than 475,000 payphones still deployed in the country. APCC proposes that payphone line service be eligible for Lifeline support at about $10 per month per line for all publicly available phones for a total cost of about $57 million annually. This is a small amount by comparison to the present (and growing) USF's support for free

[8] Nor should the Commission overlook the unavailability of any service to the members of the household of the Lifeline mobile subscriber when the phone is being carried around by one member of the household who is away, as is generally inevitable The back up for those left behind is the availability of a payphone in case of emergency or other need.

mobile phone service.[9] Continuing to provide subsidized mobile service without providing assistance to payphone service will contribute to the demise of payphones, which remain a critical part of the American communication infrastructure.

With the deployed base of payphones already having fallen by more than three-quarters from the level the Commission found consistent with the Congressional mandate to ensure their "widespread deployment," the consequences of removing even a few of the remaining payphones are greatly magnified. Payphone providers have already been forced to remove multiple payphones from all but the highest volume locations, and to eliminate payphones altogether from many locations. As a result, instead of having ready access to several payphones in their immediate neighborhoods much of the public now must rely on a single, more distant payphone. If those remaining payphones continue to disappear, and users can no longer rely on payphones for their calling needs, it is easy to foresee even in the next year, the collapse of the entire remaining payphone base as providing payphones ceases to be a viable business.

II. <u>THE REQUESTED RELEIF</u>

The Commission can readily implement Lifeline support for payphone line service through existing mechanisms. Attached to this petition are proposed rule changes that would allow Lifeline support for payphone line service. The proposed rule changes are discussed more fully in the companion Petition for Rulemaking being filed at the same time as this Petition. To summarize, the proposed amendments would amend Section 54.400(a) to allow lines actually used for the resale of service to the public to qualify for Lifeline support at a new Tier 5 "Payphone" level, set at the same rate as the combined amounts of the Tier 1, Tier 2, and Tier 3

[9] In just two years, the cost to the Lifeline program of providing support for mobile ETCs has grown to an annual cost of $385 million dollars. And it is not likely to stop growing. *See* text accompanying nn. 4, 5 above.

amounts under 47 CFR §§54.403(a)(1)-(3).[10] The ETC receiving the support must pass through the entire amount to the PSP subscribing to the payphone line in the form of a reduction in the line rate.

III. COMMISSION AUTHORITY TO ACT ON AN INTERIM BASIS

The Commission has authority to grant the relief requested herein on an interim basis pending the conclusion of the rulemaking that APCC has asked the Commission to initiate. Under Section 553 of the Administrative Procedures Act ("APA"), an agency may act in advance

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[10] The amount of Lifeline support per payphone would normally depend upon the availability of maximum carrier and state contributions under Tier 1 and Tier 2. Butin light of the Section 276 mandate, the Commission can and should dispense with the other requirements contained in 47 CFR §§54.403(a)(1)-(3) except the requirement that the full amount of the Lifeline support must be passed through to the end user. *See* text following this note. As for the requirement that state regulatory authorities approve any reduction in rates given by the ETC as a result of additional support received by the ETC under Tier 1 and/or Tier 2, the approval is, in the case of payphone line rates, superfluous since the reduction would be functionally mandated by Section 276. *See Wisconsin Public Service Commission* 17 FCC Rcd 2051 (2002). Since payphone line rates are set on a non-jurisdictional, total cost basis by federal mandate, any increase in recovery for the federal portion of the total cost recovery would have to be offset by a concurrent reduction in state revenue. In any event, all fifty states have already approved the reductions in line rates required under 47 C.F.R. § 54.403(a)(2). *See, e.g., Rural Broadband Report,* Public Notice, 24 FCC Rcd 12791, n.352 (October 19, 2009); *Federal-State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47U.S.C. §214(e)(1)(A) and 47 C.F.R. §54.201(i),* 20 FCC Rcd 15095, n.16 (2005).

As for the state matching requirement of 47 CFR §54.403(a)(3), the Commission should not discriminate between states in carrying out the federal mandate to ensure the availability of payphone service. Moreover, as explained in the accompanying Petition for Rulemaking, one of the reasons Commission intervention is necessary here is because the states have not adequately supported the availability of payphones. It would be circular to say that additional support under Tier 3 will be denied because a state is not providing state USF support since that is one of the factors making the Commission's intervention necessary. Moreover, to the extent states have already adopted Lifeline support, it would presumably apply to support for payphone lines as well. In any event, in those situations where there is no state matching for payphone lines because for some reason the state support does not apply, and if the Commission requires there to be a state match under Tier 3, the effect would be simply to reduce the sum of the Tier 1, Tier 2, and Tier 3, with a commensurate effect on the amount of federal Lifeline payphone line support.

of the notice and comment rulemaking procedures required by the APA when "the agency for good cause finds . . . that notice and public procedure thereon are impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. § 553(b)(B).

The Commission has in the past acted under the good cause exception to adopt a rule on an interim basis while conducting a notice and comment rulemaking to consider adoption of a permanent rule. For example, the Commission recently adopted rules on an interim basis to counter abuses to the Video Relay Services program in order to preserve the TRS fund. *In the Matter of Structure and Practices of the Video Relay Services Program*, 25 FCC Rcd 6012, ¶ 16 (2010).

"Good cause" is not defined by the APA; therefore "the inquiry into whether good cause [is] properly invoked must proceed on a case-by-case basis." *Alcaraz v. Block,* 746 F.2d 593, 612 (9th Cir. 1984). Generally, however, courts have held that good cause is evident when the delay created by the notice and comment requirements would result in serious damage to important interests. *National Fed'n of Fed. Employees v. Devine,* 671 F.2d 607, 611-612 (D.C. Cir. 1982); *see also Hawaii Helicopter Operators Ass'n v. FAA,* 51 F.3d 212, 214 (9th Cir. 1995) (the good cause exception applies where delay could result in serious harm); *United States Steel Corp. v. United States Envtl. Protection Agency*, 595 F.2d 207, 214 (5th Cir. 1979) (the good cause exception is an important safety valve that should be utilized when delay would do real harm). The good cause exception is particularly applicable here where it is not only payphone providers who will suffer absent immediate action by the Commission but also the millions of Americans who rely on payphones: "when there is a lack of specific and immediate guidance from the agency that would create . . .economic harm, and disruption, not only to the participants of the program . . . but would also extend to consumers in general, the good cause exception is a proper solution to ameliorate this expected harm." *Woods Psychiatric Institute v. U.S.*, 21 Cl. Ct. 324, 333 (1990) (citing *American Fed'n of Gov't Employees v. Block,* 655 F.2d 1153, 1157 (D.C. Cir. 1981)).

The Commission has previously acted on an interim basis in order to prevent the harm that delaying implementation of rules would cause to the payphone industry—and payphone users. In its 2003 order adopting new compensation rules following the D.C. Circuit's remand of its prior rules, the Commission re-adopted the existing rules on an interim basis pending the effectiveness of the new rules.[11] The Commission found that doing so was necessary in order to prevent economic harm to payphone providers and to further its mandate under Section 276.[12]

Similarly, good cause exists here for the adoption of an interim rule by the Commission pending completion of a rulemaking to adopt permanent rules because absent such emergency action, the decline in the number of payphones can become irreversible. If payphones are allowed to disappear, the result will be permanent harm to the millions of Americans who rely on payphones, many of whom have no other way of placing calls.

IV. CONCLSUION

Absent immediate action by the Commission, the existence of many if not most of the nations' remaining 475,000 or fewer payphones is threatened, leaving many of the tens of millions of Americans who depend on them with no access to essential phone services that they

[11] *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 18 FCC Rcd 19975, ¶ 56 (2003). The effective date of the new rules was delayed both by the need to provide some time for carriers to come into compliance and the need to obtain OMB approval. *Id.* ¶ 55.

[12] *Id.* ¶ 56.

use for everyday calls, free 911 calls and calls to social service agencies. It will also leave many Americans without access to phone services in times of emergency.

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ATTACHMENT 2

DATE STAMP

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of the Commission's Rules to Provide Universal Service Lifeline Support for Payphone Line Service	)	CC Docket 96-45 RM No. ______________
	)	

PETITION FOR RULE MAKING TO PROVIDE LIFELINE SUPPORT TO PAYPHONE LINE SERVICE

FILED/ACCEPTED

DEC - 6 2010

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Office of the Secretary

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Dated: December 6, 2010

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DSMDB-2838576v15

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Washington, D.C. 20554

In the Matter of Amendment of the Commission's Rules to Provide Universal Service Lifeline Support for Payphone Line Service	))))))	CC Docket 96-45 RM No. ____________

PETITION FOR RULE MAKING TO PROVIDE LIFELINE SUPPORT TO PAYPHONE LINE SERVICE

The American Public Communications Council ("APCC") hereby petitions the Federal Communications Commission to initiate a rulemaking to make Eligible Telecommunications Carriers ("ETCs") providing payphone lines eligible for Lifeline support from the Universal Service Fund for those lines at the Combined Tier 1, Tier 2 and Tier 3 Level. Payphones are a critical component of universal service, providing access to critical calling services to millions of Americans and ready, reliable access to the public network in times of crisis and during emergencies. Yet payphones are in a state of crisis, with the deployed base having fallen by more than 75% over the last ten years. The Commission's own recent actions have exacerbated that crisis, and payphones are in danger of disappearing altogether. The Commission can and should prevent that from occurring—and meet its mandate under Section 276 to ensure the "widespread deployment" of payphones—by providing universal service Lifeline support for payphone line service. The mechanism for providing such support already exists. The

Commission can thus act promptly to secure the remaining base of payphones—and the access to the telephone network that they provide for millions of Americans—before it is too late.[1]

This is an important time of transition for the universal service program. The Commission is working towards moving the program into the future, by re-focusing it on broadband access.[2] But as the Joint Board recently emphasized,[3] as the Commission looks ahead, it cannot leave behind the many millions of Americans who still lack even basic access to the telephone network. Payphones have historically responded to that need. If they are allowed to disappear, the result will be a crisis in access to communications that flies in the face of the efforts of the Commission to move the concept of universal service into the future.[4]

I. INTRODUCTION AND SUMMARY

Payphones are the epitome of universal service—a public, on-demand, reliable, high quality 24-7-365 service available to a universal class of all users without advance subscription or advance equipment purchase or rental with free 911 and TRS calling. For the many millions of people who do not have either a landline or a mobile phone, payphones are the only way of making calls. For the 18% of American adults who lack a mobile phone—a figure that jumps to

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[1] APCC is simultaneously with the filing of the instant petition filing an Emergency Petition for Special and Interim Relief requesting that the Commission make payphone line service eligible for Lifeline support pending resolution of the instant petition.

[2] *See, e.g. In the Matter of Federal-State Joint Board on Universal Service Lifeline and Link Up*, Recommended Decision, CC Docket No. 96-45 and WC Docket No. 03-109, FCC 10J-3 (Nov. 4, 2010), ¶¶ 73-74 ("*Lifeline and Link Up Recommended Decision*").

[3] *Id.* ¶ 4 ("the Joint Board supports deployment and maintenance of broadband services in areas that are now unserved or underserved, although it remains important to continue support for existing voice networks").

[4] Moreover, just as payphones began as an important service, and continue to serve as a critical back-stop, to ensure access to the traditional telephone network to Americans on the go or in transition, they are also positioned to form the infrastructure for a vast public access network in the broadband era. The next generation of payphones that provide broadband access as well as traditional voice communications are being explored. But in the meantime, the business must survive.

29% of adults with a household income of less than $30,000—payphones represent the only way of making emergency and other calls when away from home or work. And for all Americans, payphones serve as reliable back-up a for those times when making a call with a mobile phone is not possible, whether because of mobile network congestion, lack of coverage, running out of battery power, or simply because many people routinely find themselves without their mobile phones.

Payphones also play an important role in enhancing public safety and national security. They provide a critical emergency communications infrastructure that has proven to be reliable and more robust in times when other services, like mobile networks, fail or are disabled, such as occurred in the aftermath of Hurricane Katrina and the 2003 Northeast blackouts. Payphones also play a critical day-to-day role in ensuring access to emergency services. By providing free access to 911 service, payphones provide crime victims, stranded motorists, and those in the need of emergency medical care with a readily available link to the help they need.

In recognition of the critical role that payphones play in providing universal access to essential phone services, Congress enacted Section 276 of the Communications Act, which, among other things, directed the Commission to ensure the "widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1). In 1998, the Commission found that the number of payphones that existed at the time—over two million—"most appropriately" met the Congressional mandate of "widespread deployment." The number of payphones has fallen by over 75% since then, to less than 475,000. In short, the Commission has not succeeded in fulfilling its mandate, and, as a result, payphones are in state of crisis.

Moreover the Commission, while laudably taking steps recently to subsidize the delivery of free mobile phones through Universal Service Fund subsidies, has inadvertently acted directly counter to the Section 276 mandate; the Commission's subsidization of mobile services can only result in greatly accelerating the decline in the number of payphones serving the neediest who are and will increasingly be without any service as a result of the Commission's action. Indeed, the decline in payphone deployment has been exaggerated since the inception of universal service support for mobile phones in states in which large numbers of free mobile phones have been given away by mobile carriers receiving USF support. Such substitution of mobile phones for payphones results in a significant net loss in universal access to critical calling services. Only one person can use a mobile phone, but dozens of people can rely on a single payphone for their communications needs.

Absent action by the Commission, as operating payphones ceases to be a viable business,[5] many if not most of the nation's remaining 475,000 or fewer payphones are in danger of disappearing in the coming period, leaving many of the tens of millions of Americans who depend on payphones with no other access to essential phone services. Mobiles phones cannot fill the hole that would be left if payphones are eliminated—too many Americans, most especially those in the lower-income brackets who depend most heavily on payphones—do not have mobile phones and will not have them in the foreseeable future.

The Commission can address these imbalances by providing Lifeline support for payphone line service. The Lifeline support for payphone line service can be implemented at a relatively modest cost and, as shown below, has very real efficiencies as compared to the cost of

[5] The major LECs—who historically operated the bulk of the nation's payphones—have already exited the business almost entirely. AT&T and Qwest have both ceased offering payphones altogether. Verizon has dramatically reduced its in-region payphone operations to a small fraction of its historical base. Verizon recently sold-off all of its payphones in New York City. Out-of-region, APCC understands that Verizon is not installing any new payphones and is removing payphones from some existing locations. Nearly all of the remaining payphones in the United States are operated by APCC's members and other small (i.e. non-LEC) independent payphone service providers.

mobile support. Each dollar spent of support of mobile provides only limited calling to a single subscriber; each dollar of support for payphone line service provides service to dozens of users on an unlimited basis. The Commission can readily implement this relief for payphone line service through existing mechanisms.

As shown below, payphone lines clearly satisfy the statutory criteria for designation as a supported service. Payphone lines, as an essential component of payphone services, are clearly essential to the public health and safety. And the services in question are deployed in public telecommunications networks operated by telecommunications carriers.[6] While the criterion that a majority of residential customers subscribe to the service cannot, by definition, be met by payphones, that condition is not mandatory, and need only be "considered" by the Commission. Where as here, the last criterion of the statute, that the service to be supported is consistent with the public interest, is so strongly met, the Commission can and should find in favor of Lifeline support.

II. STATEMENT OF INTEREST

APCC is the national trade association representing the interests of independent (i.e. non-LEC) payphone providers. APCC's 759 members operate the majority of existing payphones. APCC's members are all sole proprietorships or small businesses.

III. BASIS OF PETITION

A. The Critical Role Played By Payphones In Ensuring Access to Essential Phone Services

[6] 47 USC § 254(c)(1)(C).

Section 276 was added to the Communications Act as part of the Telecommunications Act of 1996. In Section 276, Congress sought to "promote the widespread deployment of payphone services to the benefit of the general public." 47 U.S.C. § 276(b)(1).

The Commission has recognized that "[p]ayphones unquestionably serve critical public interests in health, safety and welfare" by providing access for all to the telephone network[7] The Commission has also found that promoting the widespread deployment of payphones furthers the "universal service function that payphones provide to those who cannot otherwise afford telephone service."[8] Indeed, the Commission has actively promoted payphones as a tool for ensuring universal access. In the Commission's 1999 guidebook for international telecommunications regulation, *Connecting the Globe: A Regulator's Guide to Building a Global Information Community,* the Commission singled out payphones as a critical tool for "ensur[ing] that even the most remote or sparsely populated area has some access to communications service." *Id.* at VI-1.

By providing all Americans, no matter what their income level, with ready, affordable and reliable access to the telephone network, payphones play a critical role in furthering the goals of universal service by affording access to the public network. Payphone service is an "on demand dial-tone/pay-per use" reliable high-quality service, available twenty-four hours a day, seven days a week, 365 days a year. *Unlike every other form of communication available to the public,* users are not required to make an initial investment in equipment, await activation of the

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[7] *Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996*, Report and Order, 11 FCC Rcd 20541, ¶ 7 (1996) ("*First Payphone Order*").

[8] *Access Charge Reform*, 18 FCC Rcd 12626, ¶ 8 (2003). There, the Commission found that "it is bad public policy to impose a non-cost-based charge, such as the PICC, on payphone lines because doing so may limit the deployment of payphone services that serve [universal service] functions." *Id.*

service or pay recurring monthly charges. Any member of the public can place a call anywhere at any time. Users have the option of paying for calls with coins or by use of calling cards, prepaid cards or other access code arrangements. Emergency 911 calls are free of charge twenty-four hours a day, seven days a week across the nation's public payphone base. Users can also place calls to 800 subscribers at no charge to the caller.

Payphones also play an important role in enhancing public safety and national security. They provide a critical emergency communications infrastructure that has proven to be reliable and more robust in times when other services, like mobile networks, fail or are disabled. For example, during the September 11, 2001 attacks, payphones provided the only reliable means of emergency communications for thousands of New York City residents and emergency services personnel. During and in the aftermath of Hurricane Katrina, when mobile towers were blown over or flooded, payphones were often the only functioning telephones. And when blackouts blanketed the Northeast and mobile and other communications network had failed, payphones again were available. Indeed, in a 2004 summary presentation to the Commission, the Wireline Competition Bureau highlighted how "payphones at work" came "to the rescue."[9] The long lines of people waiting their turn at payphones on 9-11, during the Hurricane Katrina crisis and the blackouts attest to the unique importance and reliability of payphones as critical infrastructure for all Americans. As then-Commission Deborah Tate said in a 2006 speech, "payphones are a critical part of homeland security. They are there for those times that we can't anticipate, when our landlines and cell phones aren't available, and so, as we plan for the possibility of another

[9] Wireline Competition Bureau, 2003 – 2004, Competition, Broadband, and Universal Service in a Dynamic Market, Presentation to Commission, at 9-10.

disaster—whether a terrorist attack, a hurricane, or pandemic flu—we should not forget to consider payphones as part of our response."[10]

In addition to the role payphones play during times of national crisis, payphones also play a critical day-to-day role in ensuring access to emergency services. By providing free access to 911 service, payphones provide crime victims, stranded motorists, and those in the need of emergency medical care with a readily available link to the help they need. While mobile phones provide an alternative to many Americans, as discussed below there are many occasions when mobile service is not available either because of a lack of coverage or a battery or other failure. In those instances, payphones are the only means of access to the telephone network for emergency and other calling.

Thus, as the Commission works to move the focus of universal service to broadband access, it must not lose sight of the bedrock objective of the universal service program: to ensure that no American is denied access to communications. While there is no question that there is a growing need for broadband connectivity, the ability to access the public telephone network is an even more basic need. Payphones—themselves a uniquely public resource in that they are available to all as opposed to a single subscriber—play an irreplaceable role in securing that access. For the foreseeable future, there will always be Americans without a phone of their own, and there will always be times when mobile service is not available; for those Americans, and those times, payphones are the only way of ensuring universal access to essential phone services.

B. The Precipitous Decline In Payphone Deployment

[10] Commissioner Deborah Taylor Tate, Remarks to the American Public Communications Council (May 25, 2006).

In enacting Section 276, Congress recognized the importance of payphone services and the necessity of ensuring that a sufficient number of payphones exist to ensure that the general public can benefit from their availability. In 1997, the year after Section 276 was enacted, there were over 2,000,000 payphones serving the country.[11] By 1998, that number had climbed to about 2.15 million.[12] The Commission found that deployment at that level "most appropriately satisfies Congress's stated goal of promoting widespread deployment of payphones to the benefit of the general public."[13] That finding was supported by filings from several state public utility commissions that had studied the payphone markets in their respective jurisdictions and concluded that the then-current deployment of payphones "was adequately meeting the needs of the public."[14]

Since 1998, however, the number of payphones has fallen precipitously. By 2002, when the Joint Board last addressed the issue of universal service support for payphone line service, the number of payphones had fallen to 1,919,640.[15] The Joint Board expressed concern over even that relatively modest decline, and found that the decline "may have had a detrimental

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[11] According to Commission data, as of the March 31 of 1997, the were 2,086,540 payphones in the country. *Trends in Telephone Service*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 7.6 — Number of Payphones Over Time (September, 2010) ("*Telephone Trends*").

[12] *Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Third Report and Order, 14 FCC Rcd 2545, ¶ 184 n.390 (1999) ("*Payphone Third Report and Order*").

[13] *Id.* ¶ 143.

[14] *Id.*

[15] *Federal-State Board on Universal Service*, Recommended Decision, 18 FCC Rcd 2943, ¶ 49 (2002) ("*Joint Board*"). The 1,919,640 figure cited by the Joint Board was based on 2001 data. According to data subsequently made available by the FCC, there were actually only 1,711,061 payphones deployed as of March 31, 2002. *Id.*; *see Telephone Trends*, Table 7.6..

impact on access to essential phone services."[16] The Joint Board went on to explain that "this decline in the availability of payphones might reduce access to emergency services, especially in remote areas, and might adversely impact the ability of low-income citizens to have continued access to phone service."[17]

Since the 2002 *Joint Board* decision, the decline in the number of deployed payphones has accelerated dramatically. By 2006, there were only a little over 1,000,000 payphones left in the country,[18] and in the next three years that number fell by nearly half—as of March 31, 2009, there were only 555,128 payphones left.[19] APCC believes there are 475,000 payphones left across the entire country.[20] In other words, in the little over a decade since the FCC found that a deployed base of well over 2,000,000 payphones was consistent with the "widespread deployment" of payphones envisioned by Congress, that deployed base has fallen to well under a quarter of the amount the Commission found was adequate.

Notably, this substantial loss in public payphone availability has occurred during the very same time period in which the number of Americans falling below the poverty line—the group most in need of payphone service—has dramatically increased. In 2000, there were 6.4 million

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[16] *Joint Board* ¶ 49.

[17] As discussed below, despite its concerns about the decline in payphones threatening access to essential phone services, the Joint Board decided that the record before it did not support including payphone line service in the definition of supported services "at this time," and instead recommended further study. *Joint Board* ¶ 47. As discussed in the text immediately following this note, and in Section III.C below, today the situation is very different, and universal service support for payphone lines is not only warranted but necessary in order to preserve payphones as a critical means of providing access to essential phone services.

[18] *Telephone Trends*, Table 7.6.

[19] *Id.*

[20] This estimate comes from figures provided for the third quarter of 2010 by industry clearinghouses that process dial-around compensation for carrier-payors, which ranged from 468,000 to 475,000.

American families living below the poverty line. By 2008, that number had risen to 8.147 million.[21]

C. The Continuing Critical Role of Payphones

There is no question that some significant measure of the decline in the number of payphones over the last twelve years is due in large part to the increase in mobile subscribership over that same period. In 1998, relatively few Americans had a mobile phone, and most people relied on payphones for their communications needs away from home and work. Today, by contrast 82% of the adult population has a mobile phone,[22] and for most of those mobile users payphones are now a secondary method for obtaining access to the phone network when away from home or work.

However, despite increased mobile subscribership, payphones still have a unique and critical role to play in ensuring access to essential phone services. While 82% of adults now have a mobile phone, 18%--or nearly a fifth of the adult population still do not. And among people with a household income of less than $30,000, mobile ownership is only 71%.[23] For those people, payphones remain the only way of making phone calls when they are away from their home or work, and for the many of them who do not have any phone, payphones are their only way of making calls.

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[21] U.S. Census Bureau Table 13, Number of Families Below the Poverty Level and Poverty Rate 1959-2008. In 2008 there were 39.8 million Americans living in poverty, the highest number in 11 years. U.S. Census Bureau, Report: Income, Poverty and Health Insurance Coverage in the U.S. (2008); Issued September 2009; P60-236(RV).

[22] Pew Research Center's Internet & American Life Project, April 29-May 30, 2010 Tracking Survey.

[23] *Id.*

Despite the dramatic increase in mobile subscribership, according to the Commission's most recent report on telephone penetration, 4.4% of American households still lack a phone of any kind—landline or mobile.[24] While that figure represents some decrease from 1997, in absolute terms, increases in mobile subscribership have scarcely improved access to essential phone services. In 1997, just over 6,000,000 households lacked a phone; in 2009 some 5,170,000 households still lacked a phone. For those 5,170,000 households, representing 4.4% of American families, payphones remain the only real means of obtaining access to the public telephone network.

For Americans in the lowest income brackets—i.e. those for whom ensuring access to payphones has always been especially critical—increases in mobile subscribership have made even less of a difference. According to Commission data, as of 2009, nearly 10% of all households making $20,732 or less had no landline or mobile phone.[25] For that group of payphone users, the more than 75% decline in the number of payphones since 1996 has resulted in a significant net decrease in access to the public telephone network. In 1997, there were roughly .68 payphones for every household in the lowest income group (households with annual income of less than $10,000); as of 2009, that number has fallen to .25, a decrease of nearly two-thirds.[26] Thus, for those Americans without a phone of their own and who must therefore rely on

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[24] *Telephone Penetration By Income By State*, Industry Analysis and Technology Division, Wireline Competition Bureau, Table 4 (May, 2010) ("*Penetration By Income*").

[25] *Penetration By Income*, Table 4. The $20,732 in annual income corresponds to $10,000 in 1984 dollars, which is the baseline year for the Commission's analysis. According to the Department of Health and Human Services poverty guidelines for 2010, the poverty line in the continental 48 states and the District of Columbia for a family of four is $22,050. *See* http://aspe.hhs.gov/poverty/10poverty.shtml (accessed Nov. 11, 2010).

[26] *See Penetration By Income*, Table 4; *Telephone Trends*, Table 7.6. In 1997, there were 3,049,204 households with income of less than $10,000, and 2,086,540 payphones. In 2009, while fewer households with income of less than $10,000 did not have a phone (2,253,415), the number of payphones (555,128) had fallen by roughly three-quarters to 555,128.

payphones, the ability to access essential phone services has significantly diminished as mobile penetration has increased.

It is also worth noting that the telephone penetration statistics maintained by the Commission reflect household ownership of a phone; not individual phone ownership. According to cellular industry data, 24.5% of American households are mobile-only. In many of those homes, there are fewer phones than there are adults, meaning that the percentage of adults without functional access to a phone is greater than the percentage of households that lack a phone. When a mobile subscriber is away from the rest of the household, the phone is simply not available for use by those household members that may remain behind in the residence. In this circumstance, mobile phone service does not provide the means for other household members to place calls. By contrast, payphones can and do provide multiple fixed communication outlets for not only every member of one household but for a large number of households.

Moreover, there will always be segments of the population such as the homeless for whom mobile subscribership is unlikely to be a viable option. While mobile carriers have sought universal service support for their services as a way of providing service to lower income Americans, the viability of mobile subscribership does not turn on just the ability of the user to pay for the service. For example, is it realistic to think that a homeless person will be able to maintain a handset, battery and charger—and be able to keep the phone charged and in working condition on an extended basis? The point is that while the rise in mobile subscribership is unquestionably laudable from the perspective of ensuring access to the public telephone network, there are real-world limitations on the ability of mobile providers to reach all Americans.

And even for people who can afford a mobile phone and are capable of managing their service, payphones still can and do play an important role in ensuring access to the public network. There are many instances where owning a mobile phone does not equate to having it available.

First, many people do not carry their mobile phones with them at all times and thus must still rely on payphones for emergency and other communication away from their homes and places of work. Indeed, New York City has recently acknowledged the important role that payphones continue to play in providing emergency communications services even in this era of high mobile penetration. New York City has recently decided to eliminate 15,000 emergency-help boxes from New York streets. As reported in the New York Times, in response to concerns that doing so would decrease access to emergency communications services, particularly for the deaf and handicapped, Mayor Bloomberg's office pointed out that the city's public payphones remain available to provide exactly that function.[27]

Second, as many mobile users know all too well, battery life continues to be a significant issue. By contrast, since payphones are powered by the network, they are always available as a dependable means of accessing the network.

Third, the mobile carrier networks are still far from ubiquitous and there are large areas of the country where one mobile provider or another lacks coverage. In those areas, the need for payphones is no less than it was in 1996 when the Commission recognized that for many users "payphones are the only readily available means of accessing . . . critical communications

[27] New York Times, *City Renews Effort to End Use of Street Alarm Boxes*, June 25, 2010 ("*NYT Alarm Box Article*").

services."[28] If anything, given the dramatic reduction in the number of payphones, the need for the remaining payphones is even greater.

Fourth, as the Commission has itself found, during emergencies and natural disasters, mobile networks often fail or are overwhelmed.[29] Payphones tend to be far more robust, both because LEC central offices typically are in more secure locations than cell towers and have better power backup facilities than do mobile cell sites and because the landline network is less subject to call overloading than are mobile networks.[30]

Fifth, even in areas where there is mobile coverage generally, there are many locations where it is not possible to make calls. Subways are an obvious example—and also exactly the kind of venue where people need to be able to place calls. Commuters in subways frequently need to contact a friend or family member to coordinate plans with them or to let them know that plans have changed. With isolated exceptions where a carrier has constructed antennas in the subway system, mobile phones are completely unusable in subways, leaving payphones as the only viable options for calls. Data from payphones located in Chicago Transportation Authority

[28] *First Payphone Order* ¶ 277.

[29] *See, e.g. Report to Congress on the Study to Assess Short-term and Long-term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State and Local Emergency Response Providers,* 2005 LEXIS 6907 (Dec. 19, 2005), ¶ 7 (hurricanes Katrina and Rita caused extraordinary destruction to mobile and other communications facilities, leading to, among other things, the impairment of emergency response efforts).

[30] Indeed, even during emergencies where mobile service is available, payphones have the advantage of providing precise location information to emergency responders. If a caller makes an emergency call from a mobile phone, the E911 information provided to the E911 operator is approximate. By contrast, when the same call is made from a payphone, the E911 operator receives the exact address of the payphone as maintained in the serving LEC's database. This precise location information is especially critical where the caller is unable to supplement the location information automatically transmitted by the phone, which can happen for a variety of reasons including the caller being deaf, language barriers, and the caller not knowing his or exact location. *See, e.g.* NYT Alarm Box Article (citing New York City officials as pointing out that payphones can "pinpoint the location of callers even if they do not speak").

(CTA) facilities strikingly underscores this point. In 2009—when more than 8 out of every 10 Americans had a mobile phone—over one million payphone calls were still made from payphones at CTA facilities.[31]

Sixth, by their public nature, payphones play one role that personal phones cannot. There are many times when a caller may need anonymity—such as for calls to a rape crisis center, a drug addiction help line, or to report a crime—and would be deterred from making those calls if they were forced to use their own phone. So long as payphones are available, however, people will be able to make calls to get the help they need without needing to be concerned about being able to be identified by the phone they are calling from.

Finally, for many lower-income Americans, payphones are a far more affordable means of making calls than are mobile phones. The prepaid plans utilized by many of those users have relatively high per-minute charges, typically about $.10.[32] By contrast, payphones typically offer unlimited local calling for 50 cents or less per call. Thus, for all but the shortest local calls, payphones are far more cost effective than the prepaid mobile plans typically used by lower-income subscribers. Long Distance calling from payphones is similarly cost effective for low income subscribers as compared to typical prepaid mobile rates.[33] This is particularly true for the millions of Americans who regularly call friends and families abroad, for whom international prepaid calling cards offer a dramatically less expensive alternative than placing international calls from their prepaid mobile phones. Perhaps most importantly, with respect to vital 8YY toll

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[31] *See* The Depaulia, *CTA to Hang Up Pay Phones*, Oct. 4, 2010.

[32] While, as discussed in Section III.E below, some wireless providers have obtained ETC status and use Lifeline support to provide their eligible subscribers a certain number of free minutes each month, the number of free minutes is limited—often only in the 100-200 per month range, and in some cases as little as 68—and the price for each additional minute beyond the free minutes—$.20 or more—is much higher than the typical cost of mobile minutes.

[33] Many public payphones offer call-anywhere in the U.S. price plans for 10 cents/minute or less.

free calling to government agencies and non-profit community service organizations by low income consumers, this access is provided free of charge to callers from payphones. Mobile providers, by contrast, charge their regular per-minute rates for 8YY calls. Given the often substantial hold times associated with these numbers, calling them from a mobile phone can become prohibitively expensive. Payphones thus have a vital role to play in ensuring access to critical governmental and social service agencies for the most economically challenged citizens.

One more statistic serves to sum up why payphones still matter. Last year, APCC estimates that well over 500,000,000—and perhaps as much as one billion—calls were made from payphones. That means that, on average, every American adult used a payphone several times over the course of the year. Of course, payphone usage isn't evenly distributed across the population. The large majority of those one billion calls were likely made by the neediest Americans who, absent the availability of the payphone they used, would have had no other means of placing their call.

D. Existing Efforts to Support Payphone Service Are Inadequate

Recognizing the important role of payphones in ensuring access to the public telephone network, in Section 276 Congress directed the Commission to consider whether to require "public interest payphones, which are provided in the interest of public health safety, and welfare, in locations where there otherwise would not be a payphone . . . ." 47 U.S.C. § 276(b)(2). The Commission addressed the matter in its *First Payphone Order* and concluded that public interest payphones, as envisioned by Congress, were necessary to "ensure the maintenance of payphones that serve the public policy interests of health, safety, and welfare in locations where there would not otherwise be payphones as a result of the operation of the market."[34] In so holding, the Commission found that

> As demonstrated by the comments, all payphones serve the public interest by providing access to basic communications services. We are particularly concerned about the role served by payphones in providing access to emergency services, especially in isolated locations and areas with low levels of residential phone penetration. Indeed, in some such areas, payphones are the only readily available means of accessing these critical communications services.

First Payphone Order ¶ 277 (internal citations omitted). Despite finding that the establishment of public interest payphones was in the public interest, the Commission did not establish a federal program. Instead, the Commission left the matter to the states, and permitted—but did not require—the states to establish and fund their own individual public interest payphone programs.

Unfortunately, as reflected in *Joint Board*, very few states have adopted a public interest payphone program, and in those few states that have, the programs have been very limited in scope.[35] As a result, as the Joint Board found, "there are relatively few 'public interest payphones' in the United States."[36] That was true in 2002, and is truer today when the number of public interest payphones has dwindled to a handful. It is not now realistic to look to future improvements to state public interest payphone programs to help stem the tide of payphone removal. Far fewer states today have a meaningful public interest payphone program than was the case in 2002, and, in this era of squeezed state budgets it is highly unlikely that any state is going to allocate new funding to payphone programs. Thus, whatever promise the public interest payphone mechanism may have had in 1996, it is clear in 2010 that the program cannot meet the

[34] *First Payphone Order* ¶ 277.

[35] *Joint Board* ¶ 50.

[36] *Id.*

Congressional goal of ensuring a sufficient number of payphones to serve the public health, safety and welfare.[37]

Nor has the commission succeeded in implementing the other measures mandated by Congress in a manner that ensures an adequate base of deployed payphones. The Commission has, in accordance with Section 276, adopted regulations to provide dial around compensation for PSPs.[38] The Commission has also promulgated non-discrimination guidelines for the LECs, including the requirement that the former RBOCs adhere to the new services test ("NST") requirement for payphone line rates.[39] Yet, as discussed above, over the last ten years, payphones have been removed at a very accelerating rate and many payphones are being removed even though they continue to provide vital service. Moreover, apart from the impact of mobile communications generally, Commission policy to promote mobile use for consumers qualifying for Lifeline is having the unintended consequence of causing the removal of many of these phones.

E. Existing Lifeline Support for Mobile Phones Has the Perverse and Unintended Effect of Causing the Removal of Payphones

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[37] Even if the Commission and particular states were to decide that public interest payphone programs are an effective way of halting the decline in the number of payphones, it would likely take years for those programs to be designed, funded, and implemented, by which time it would be too late.

[38] *See First Payphone Order* ¶ 48; 47 C.F.R. §§ 64.1300-64.1320.

[39] *See Wisconsin Public Service Commission,* 17 FCC Rcd 2051 (2002) *("NST Order")* (subsequent history omitted). Although the existence of rates approximating NST compliance is now fairly widespread, at least in Bell Company territories, the prevalence of these rates has not stemmed the tide of payphone removals, as discussed in the text. Many PSPs only belatedly received the relief of NST compliant rates because of Bell Companies' foot dragging and misguided state decisions. The injustice and unfairness caused by these delays, is the subject of several pending proceedings before the Commission. *See, e.g., Petition of the Illinois Public Telecommunications Association for Declaratory Ruling,* CC Docket No. 96-128 (filed July 30, 2004).

Not only are the programs designed to support payphones inadequate to ensure their continued "widespread deployment," existing Lifeline support for mobile prepaid providers is having the unintended—and perverse—effect of leading to the removal of payphones. In a series of recent orders, the Commission has granted two mobile resellers ETC status in order for them to obtain Lifeline support for their services, and has paved the way for others to obtain similar relief.[40]

As mentioned above, in the two year period since the FCC decided to allow pure reseller mobile carriers to provide USF eligible recipients with free mobile phones, payphones have declined from over 700,000 phones to less than475,000 nationwide. The decline has been exaggerated in those states in which larger numbers of free mobile phones have been provided through USF support of mobile service. For example, in Florida, where the number of free mobile phones has increased to 400,000 (at a cost of over $4 million per month to the USF program) in just two years, the number of payphones has dropped precipitously from over 34,000 in 2008 to about 16,000 today – a decline of over 50 percent. It is clear that the loss of these payphones affects access to critical social services. According to studies done in 2008 and 2010 of calling traffic from Florida payphones, 20 percent or more of the calls from the payphones in the study were to social services and similar government agencies.

As more mobile providers obtain waivers and more states adopt this program, the trend of payphone loss will continue throughout the country. Over half the states including

[40] The Commission has granted ETC status to TracFone Wireless and Virgin Mobile. *See Virgin Mobile USA, L.P.*, 24 FCC Rcd 3381 (2009), *TraceFone Wireless, Inc.*, 23 FCC Rcd 6206 (2008). The Commission has also granted petitions filed by other wireless resellers seeking forbearance from the requirement that they provide facilities-based service, paving the way for the consideration and (presumably) grant of their ETC petitions. *See Conexions Petition for Forbearance*, WC Docket No. 09-197, FCC 10-178 (Oct. 1, 2010); *Telecommunications Carriers Eligible for Universal Service Support,* 25 FCC Rcd 10510 (2010); *i-wireless, LLC Petition for Forbearance from 47 U.S.C. § 214(e)(1)(A)*, 25 FCC Rcd 8784 (2010).

Massachusetts, New Jersey, West Virginia, Virginia, Michigan and Georgia have programs in place, to provide free mobile phone service through the USF program and more and more states are implementing the program.

While the provision of Lifeline support to mobile resellers may increase telecommunications access by the individual to whom it was provided, it also this laudable result inevitably also leads to diminished use of payphones in the low-income and other neighborhoods where they are most needed.[41] Payphones operate on very thin margins so the decreased use by a former payphone user who now has a free cell phone provided through Lifeline may result in the payphone being taken out of service. Take for example a payphone that requires 100 calls per month to survive. If the payphone serves 40 repeat customers who each make two calls a month, and 20 one-time customers, when even one or two of those customers is, as a result of Lifeline support, newly able to afford a prepaid phone and stops using the payphone, the payphone can no longer cover its costs, the largest of which are line costs, and must therefore be removed. While the user(s) who gets a mobile phone may be better off from a universal service perspective, the net effect is unquestionably negative. While one or two users gain that service, the other 58 or 59 people who relied on the payphone for their calling needs no longer have it available and have thus lost ready access to the telephone network—a result that flies in the face of the goal of universal service.

[41] APCC emphasizes that PSPs are not opposed to Lifeline support for mobile providers. Indeed, APCC has in the past lauded such support mechanisms. *See, e.g.* Comments of the American Public Communications Council on Virgin Mobile USA, L.P.'s Petition to Modify Lifeline Certification Methods in Its Limited ETC Designation Compliance Plan, WC Docket No. 09-197 (filed April 14,2010); Comments of the American Public Communications Council on TracFone Request For Clarification of Universal Service Lifeline Program "One-Per-Household" Rule As Applied To Group Living Facilities, WC Docket No. 03-109 (filed November 20, 2009). At the same time, as discussed in the text, payphones may be a much more cost effective way, and indeed the only way for consumers who can't afford mobile service even with Lifeline support, of providing service to many consumers.

Indeed, as discussed above, even other members of the new mobile subscriber's household may functionally have less access to essential phone services. Where the addition of a new mobile subscriber results in the removal of the payphone that the household previously relied upon, when the mobile subscriber is away from home, the other members of the household no longer have any way of making calls. This same phenomenon is also relevant to group homes and similar residences for the most disadvantaged Americans.[42] If one or two residents of a group home receive a subsidized mobile phone, and as a result the payphone previously relied upon by all the residents is removed, then the net result is a dramatic decrease in the availability of phone service to the house's residents.

Moreover, these examples illustrate why Lifeline support for payphone service can be far more efficient than support for mobile phones. Lifeline support for a single or a few payphone lines would allow the deployment of payphones for the 58 or 59 payphone users or the other household members who are left without service as a result of the subsidy to the mobile provider.

Apart from these issues, the provision of Lifeline support to mobile service providers in the absence of similar support for payphone line services is inconsistent with the requirement that universal service support be administered in a "competitively neutral manner." 47 C.F.R. § 54.701. By leading to the removal of payphones that otherwise would have continued to remain at least marginally profitable, Lifeline support for wireless providers causes competitive harm on two levels. First, it causes direct harm to the PSP who was forced to remove the payphone and thus lose the revenue the payphone generated and is as a result one step closer to no longer

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[42] In its recent *Lifeline and Link Up Recommended Decision*, the Joint Board noted that residents of group homes and similar facilities often lack access to critical calling services. *Lifeline and Link Up Recommended Decision* ¶ 13. The Joint Board suggested that the lack of access could be addressed by extending low-income support to group living facilities. *Id.* Payphones could serve that function, and indeed are an efficient way of doing so.

being able to operate a viable business. Second, it has the effect of suppressing payphone usage generally.

With the deployed base of payphones already having fallen by more than three-quarters from the level that the Commission found consistent with the Congressional mandate to ensure their "widespread deployment," the consequences of removing even a single payphone has greatly magnified consequences. Payphone providers have already been forced to remove multiple payphones from all but the highest volume locations, and to eliminate payphones altogether from many locations. As a result, instead of having ready access to several payphones in their immediate neighborhoods, many payphone users now have to rely on a single, more distant payphone. If those remaining payphones continue to disappear, and users can no longer rely on payphones for their calling needs, it is easy to foresee in the very near term, the collapse of the entire remaining base.

F. History of Payphone Line Service and USF

APCC has advocated USF support for payphone line service in the past. In 2001-02, APCC submitted comments to the federal-state Joint Board on universal service advocating that USF support be provided for payphone line service. In its decision in the proceeding,[43] the Joint Board did address the proposal to some extent, finding that support for payphone line service should not be recommended at that time for several reasons. The Joint Board said that including payphone line service as a service subject to USF support would be in conflict with one of the statutory principles required to be considered -- that services supported be "subscribed to by a substantial majority of residential customers."[44] But this is not a binding instruction if the

[43] *Joint Board,* 17 FCC Rcd 14115-17.

[44] *Id.* 14115.

Commission finds other statutory criteria are met. As we demonstrate below, the public interest in providing Lifeline support for payphone line service is overwhelming since payphones are a crucial part of universal service and play a critical role in guaranteeing universal service in those times when it is most needed, during emergencies and disasters, both natural and caused by human events.

The Joint Board was also concerned that USF support for payphone line service as then proposed did not fit into any existing universal service funding mechanism.[45] The current proposal does fit into an existing mechanism, the Lifeline support mechanism.

Another concern of the Joint Board was that making payphone line service subject to universal support might reduce the number of ETCs. Under Section 214(e) of the Act, 47 USC § 214(e), an ETC must offer all services that are eligible for USF support. Since mobile carriers and many CLECs do not offer payphone lines, those not offering payphone lines would lose their ETC status.[46]

The Joint Board's conclusion is based on an erroneous factual premise. The unique features of payphone lines that are needed by PSPs are requirements imposed on specific classes of carriers. For example, the requirement that serving LECs offer payphone service providers ("PSP"s) blocking at the central office level of certain international call dialing sequences was imposed only on LECs and then only where "technically feasible."[47] At the outset, it should be

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[45] *Id.*

[46] *Id.* 14116.

[47] *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation, Reconsideration Order* 7 FCC Rcd 4355, 4361 (*"International Direct Dial Blocking").* Similarly, waivers and exemptions are available where other services useful to PSPs and otherwise required are not technically feasible to implement. *See Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation*, Memorandum Opinion and Order, 12 FCC Rcd 11606 (CCB 1997). *See also Policies and Rules Concerning Operator Services Access and Pay Telephone Compensation,* Third Report and Order, 11 FCC Rcd 17021,

observed that ETCs qualifying for Lifeline support are already required to offer toll limitations services.[48] In any event, wireless carriers are not LECs; they are Commercial Mobiles Services providers.[49] Moreover, wireless carriers already offer international blocking service. As for CLECs, the Commission found that the blocking service is relatively easily implemented but to the extent a CLEC ETC is incapable of offering the service because it is not "technically feasible," there is no requirement to offer the service. Similarly, the requirement for specific coding digits to accompany the transmitted ANIs when a call originating from a payphone is sent through the network was imposed on all LECs[50] who could efficiently recover from PSPs within a reasonable time the cost of implementing the capability.[51] Thus, the requirement either has applied to CLECs *ab initio* or not at all, and in any event, CLECs can waive out of the requirement under the established criteria.[52] In sum, all a wireless or CLEC with ETC status

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¶ 8 (1996) (Service must be offered only "where technically feasible or economically reasonable.")

[48] *See* 47 CFR §54.101(a)(9). *See also* 47 CFR § 54.403(c).

[49] *See* 47 U.S.C. § 332.

[50] *See Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996,* Memorandum Opinion and Order, 13 FCC Rcd 4998, ¶ 23 (CCB 1998) ("*Coding Digits*").

[51] *Id.* ¶ 73 *et seq.* While *Coding Digits* by its terms granted a waiver from the requirement of providing payphone specific coding digits, to only mid-sized and small LECs, the criteria used in developing the waiver – whether a LEC could efficiently effectuate a cost recovery from PSPs within a reasonable time for the costs of implementing the upgrades necessary to provide payphone specific digits—would apply equally to CLECs.

[52] *See* sources cited in n.47 above; *see also Policies and Rules Concerning Operator Service Access and Pay Telephone Compensation,* Memorandum Opinion and Order, 12 FCC Rcd 14857, ¶ 9 (CCB 1996) (in light of economic burden, service need only be offered after Bona Fide Request).

needs to do is designate a class of service called "payphone lines"[53] in order to continue to qualify for USF.[54]

While the Joint Board noted the decline in payphones, an additional concern raised by the Joint Board was that there was no evidence that Lifeline support for payphone line service would make payphones profitable enough to keep payphones in service, or that the support would not simply provide a windfall for some payphones without providing enough economic support to keep otherwise uneconomic payphones in service. But as we have demonstrated above, the number of payphones is in rapid decline. Other programs have not been successful in ensuring that payphones remain deployed in sufficient numbers to serve the public interest. While there can be no guarantee that Lifeline support for payphone line service will keep all payphones that would otherwise go out of service in place, there can be no question but that many payphones providing a vital service, as described above, would remain in service with the benefit of Lifeline

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[53] Some LECs offer a rich array of other features for payphone lines. For example, LECs offer out bound only service, various caller ID restrictions or options, additional 1+ dialing blocking at the central office level, total toll restriction, call screening services, 900 blocking, etc. But these services are available as well to other classes of users (such as business and/or residence subscribers) who may also have specialized needs. Thus, unlike the international toll blocking services, or the coding digits that are routinely a part of the "payphone line" and to which the PSP is subscribed simply by ordering "payphone" service, the ancillary services available to PSPs are not part of a payphone line.

[54] The Joint Board also confused the requirement that a payphone line be available with the requirement that payphones be capable of being deployed on a particular line. Thus, the Joint Board noted that there may be payphones capable of being deployed on wireless connections and that was an issue that should be explored in a proceeding to be launched by the Commission. *Joint Board* at n.120. In fact, some PSPs already subscribe to service from wireless carriers and/or ETCs. But in any event, the inquiry is irrelevant. All the carrier need do is make a facility available, "Smart" phones are instrument implemented, and only need to have a line connection from the carrier switch, *See Registration of Coin Operated Telephones Under Part 68 of the Commission's Rules and Regulations*, FCC 84-270, 1984 FCC Lexis 2469 57 P&F Rd. Reg. 133 (June 15, 1984). Of course if a carrier offers implementation of coin lines through central office controls, the carrier must also make such a line available to independent PSPs. *See, e.g., Ameritech's Plan to Provide Comparable Efficient Interconnection to Providers of Pay Telephone Service; Implementation of the Pay Telephone and Compensation Provisions of the Telecommunications Act of 1996*, Order, 12 FCC Rcd 4238 (April 15, 1997).

support. As for the Joint Board's concern that the USF subsidy would be a windfall for some payphones, it is addressed in the next section, where we discuss implementation of Lifeline support for payphone line service.

The Joint Board did recommend that the Commission issue a notice of inquiry to determine whether USF support is necessary. The Commission, however, declined to do so, noting that state Public Interest Payphone programs were available to address subsidies for specific payphones, and that parties could petition the FCC if they believed Public Interest Payphone programs are inadequate.[55]

This petition is partially in response to the Commission's invitation. It comes in an environment entirely different than the environment at the time of the Joint Board's and the Commission's earlier decisions were rendered. As discussed above, in part due to the unintended consequence of the Commission's extension of universal service support to prepaid mobile providers, the very existence of payphones is now threatened. The Commission must act lest it preside over the total disappearance of this vital link for those who otherwise have no way of making calls.

IV. THE COMMISSION SHOULD PRESERVE SERVICE TO ALL CONSUMERS AND REDRESS COMPETITIVE IMBALANCE BY MAKING PAYPHONE LINES ELIGIBLE FOR USF LIFELINE SUPPORT

As we have demonstrated above, payphones are a vital universal service link and in many cases provide a far more cost effective way of providing service than, for example, the Commission's current policy of allowing Lifeline support to mobile carriers. As discussed above, however, the Commission's extension of universal service support to mobile carriers has had the perverse consequence of decreasing universal access to critical calling services. The

[55] *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 15090, 15099-100 (2003).

great majority of Americans without phone service have not and cannot—at least without completing overburdening the Universal Service Fund—receive a subsidized mobile phone. Yet if even a small number of payphone users substitute subsidized mobile phones for payphone calling, payphones will disappear leaving all those who previously relied on them and who have not received a mobile phone without any access to phone service. Moreover, as discussed above, the current policy is also not competitively neutral in that it favors mobile carriers over payphone service providers.

The Commission can address these imbalances by providing Lifeline support for payphone line service. The Lifeline support for payphone line service can be implemented at a relatively modest cost and, as illustrated above, has efficiencies as compared to the cost of mobile support. At the moment, as discussed above, there are 475,000 or fewer remaining payphones. APCC proposes that payphone line service be eligible for Lifeline support at the combined Tier 1, Tier 2 and Tier 3 level of support for a maximum total cost of about $57,000,000 annually.[56] By comparison to the amounts being expended, and growing, on mobile Lifeline support, the cost of Lifeline support for payphone line service is relatively low. In just the first two quarters of 2010, universal support for Tracfone alone was at an annual rate of $330,000,000.[57] Virgin Mobile, just recently ramping up after its 2009 ETC designation in only three (3) states and part of New York,[58] has received about $14,000,000 in the second

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[56] *See* note 61, *infra*.

[57] *See FCC Filings: 2010: Quarterly Administrative Filings for 2010,* Chart L:104—Quarterly Low Income Support Disbursements by Company, available at USAC.Org. For the first two quarters of 2010, TracFone collected $165,000,000 from the Lifeline fund. *Id.*

[58] *See* n. 40, *supra*.

quarter of 2010 alone.[59] These amounts will grow, as the Commission has also recently issued orders that will allow additional wireless carriers to qualify as ETCs.[60] Each dollar spent of support of mobile provides only limited calling to a single subscriber; each dollar of support for payphone line service provides service to dozens of users on an unlimited basis,

The Commission can readily implement this relief for payphone line service through existing mechanisms. Attached to this petition are proposed rule changes that would allow Lifeline support to payphone line service. To summarize, the proposed amendments would amend Section 54.400(a) to allow payphone lines actually used for the resale of service to the public to qualify for Lifeline support at a new Tier 5 "Payphone Service" level, set at the same rate as the combined amounts of the Tier 1, Tier 2, and Tier 3 amounts under 47 CFR §§54.403(a)(1)-(3). The ETC receiving the support must pass through the entire amount to the PSP subscribing to the line.[61] The PSP would be required under Section 54.410(a) to certify that

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[59] *See* source cited in n. 57, *supra*. Virgin Mobile has applications for approval as an ETC pending in at least four (4) other states and the District of Columbia. In just two years, the cost to the Lifeline program of providing support for mobile ETCs has grown to an annual cost of $385 million dollars and the program is in its incipient stages.

[60] *See* n. 40, *supra*. The Commission granted additional petitions for forbearance, a prerequisite to qualifying as an ETC for non-facilities based wireless carriers to qualify as ETCs. Applications from additional wireless carriers to become ETCs are also on file.

[61] The amount of Lifeline support per payphone would normally depend upon the availability of maximum carrier and state contributions under Tier 1 and Tier 2. But, in light of the Section 276 mandate, the Commission can and should dispense with the other requirements contained in 47 CFR §§54.403(a)(1)-(3) except the requirement that the full amount of the Lifeline support must be passed through to the end user. As for the requirement that state regulatory authorities approve any reduction in rates given by the ETC as a result of additional support received by the ETC under Tier 1 and/or Tier 2, the approval is, in the case of payphone line rates, superfluous since the reduction would be functionally mandated by Section 276. *See Wisconsin Public Service Commission*. Since payphone line rates are set on a non-jurisdictional, total cost basis by federal mandate, any increase in recovery for the federal portion of the total cost recovery would have to be offset by a concurrent reduction in state revenue. In any event, all fifty states have already approved the reductions in line rates required under 47 C.F.R. § 54.403(a)(2). *See, e.g., Rural Broadband Report,* Public Notice, 24 FCC Rcd 12791, n.352 (October 19, 2009); *Federal-*

the line is actually being used for resale of services to the public through a payphone. Payphone lines would be reimbursement eligible for the ETC under 47 C.F.R. § 54.407(a), based on the number of payphone lines the carrier is providing.

The Lifeline support would apply to all payphone lines. The alternative is a "needs-based" showing on a payphone-by-phone basis. Administering such a program would be a significant burden. Certainly, it would be difficult for the Commission to administer such a program for payphones across the country. It is not clear state commissions would be able or willing to do so in their own states. Moreover, APCC's understanding is that a significant factor in establishment of public interest payphone programs and a cause of their demise is the heavy burden on state commissions in administering a "needs-based" program, where a determination must be made on a payphone-by-phone basis whether a particular payphone warrants USF support.[62]

State Joint Board on Universal Service; Petition of TracFone Wireless, Inc. for Forbearance from 47U.S.C. §214(e)(1)(A) and 47 C.F.R. §54.201(i), 20 FCC Rcd 15095, n.16 (2005).

As for the state matching requirement of 47 CFR §54.403(a)(3), the Commission should not discriminate between states in carrying out the federal mandate to ensure the availability of payphone service. Moreover, one of the reasons Commission intervention is necessary here is because the states have not adequately supported the availability of payphones. *See* discussion, *supra,* at Notes 34-37 and accompanying text. It would be circular to say that additional support under Tier 3 will be denied because a state is not providing state USF support since that is one of the factors making the Commission's intervention necessary. Moreover, to the extent states have already adopted Lifeline support, it would presumably apply to support for payphone lines as well. In any event, in those situations where there is no state matching for payphone lines because for some reason the state support does not apply, and if the Commission requires there to be a state match under Tier 3, the effect would be simply to reduce the sum of the Tier 1, Tier 2, and Tier 3, with a commensurate effect on the amount of federal Lifeline payphone line support.

62 *See also* n. 37, *supra*. There is some risk, as the Joint Board noted, that there is a possibility that there could be increased return to some payphones that are already profitable. But given the low margins that characterize the payphone industry, the risk is relatively marginal.

A related concern is that the availability of Lifeline support will stimulate more payphones to be installed thus raising the cost to the USF of providing Lifeline support to

V. USF SUPPORT FOR PAYPHONE LINES SATISFIES THE STATUTORY CRITERIA

Payphone lines clearly satisfy the statutory criteria for designation as a supported service.[63] Payphone lines, as an essential component of payphone services, are clearly essential to the public health and safety, [64]as discussed above. Even the Joint Board acknowledged that it is

> concerned that [the decline noted by the Joint Board] in the availability of payphones might reduce access to emergency services, especially in remote areas, and might adversely impact the ability of low-income citizens to have continued access to phone service.

Joint Board, 17 FCC Rcd at 17116. Since the Joint Board expressed its concern, the number of payphones in service has declined more than precipitously—there are now less than one-fourth the number of payphones in service as when the Joint Board expressed its concern. Yet, as discussed above, payphones continue to play a vital role in times of emergency or calamity and to provide ever more vital access to the telecommunications network for low income consumers.

The services in question are deployed in public telecommunications networks operated by telecommunications carriers.[65] As discussed above in response to the Joint Board's

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payphone line service. This is highly unlikely. The upfront and transaction costs of site preparation, hook-up, wiring, installation, sales and contracting, etc. are typically in the $500-600 or greater range. The availability of Lifeline support at an otherwise unprofitable location is highly unlikely to make the location attractive given these significant entry costs, the low margins, and other costs associated with placing and maintaining the payphone. Moreover, we note that as a practical matter, Lifeline support is more designed to hold the existing base rather than to stimulate additional payphone, although from the perspective of the Section 276 mandate, the latter is not a result to be discouraged.

[63] 47 USC § 254(c)(1).

[64] 47 USC § 254(c)(1)(A).

[65] 47 USC § 254(c)(1)(C).

observation that a majority of residential customers have not subscribed to the service, [66] by definition this criterion could not be met by "payphone line service", but this condition is not mandatory, and need only be "considered" by the Commission. Clearly, where as here, the last criterion of the statute, that the service to be supported is consistent with the public interest, is so strongly met, [67] the Commission should find in favor of Lifeline support. As discussed above, payphones are the ultimate form of universal service –available to any end user, 24/7/365, on demand without any advance ordering or qualification and without the need for the end user's own terminal, in times of emergency, national disaster, or for the daily conduct of essential and non-essential personal and business activities. They are vital public safety and public health safeguards.

VI. CONCLUSION

For the reasons shown above, the Commission should initiate a rulemaking to make payphone lines eligible for Lifeline support from the Universal Service Fund at the Combined Tier 1, Tier 2 and Tier 3 Level, in order to ensure that payphones continue to remain available to the millions of Americans who rely on them for access to critical calling services.

Respectfully Submitted,

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Dated: December 6, 2010

[66] 47 USC § 254(c)(1)(B).

[67] 47 USC § 254(c)(1)(D).

ATTACHMENT

ATTACHMENT

RULE AMENDMENTS

Sec. 54.400 Terms and definitions.

As used in this subpart, the following terms shall be defined as follows:

(a) Qualifying low-income consumer. A ``qualifying low-income consumer" is ***i)*** a consumer who meets the qualifications for Lifeline, as specified in Sec. 54.409***; or ii) a payphone service provider, as defined in Section 276 of the Communications Act, who uses a line in the class of service designated for payphone service in the local exchange where the line is being used to provide payphone service.***

Sec. 54.403 Lifeline support amount.

(a)

(5) Payphone Line Service Tier. Payphone lines shall be eligible for support at a rate equal to the combined Tier 1, Tier 2, and Tier 3 support in the exchange where the payphone line is located without regard to whether the requirements of those Tiers are otherwise met except that the eligible telecommunications carrier shall be required to pass through the full amount of Lifeline support to the payphone service provider.

Sec. 54.407 Reimbursement for offering Lifeline.

(a) Universal service support for providing Lifeline shall be provided directly to the eligible telecommunications carrier, based on the number of qualifying low-income consumers ***and payphone lines*** it serves, under administrative procedures determined by the Administrator.

(b) The eligible telecommunications carrier may receive universal service support reimbursement for each qualifying low-income consumer ***and payphone line*** served. For each consumer ***and payphone line*** receiving Lifeline service, the reimbursement amount shall equal the federal support amount, including the support amount described in Sec. 54.403(c). The eligible telecommunications carrier's universal service support reimbursement shall not exceed the carrier's standard, non-Lifeline rate.

54.410 Certification and Verification of Consumer ***and Payphone Service Provider*** Qualification for Lifeline.

(a) Certification of income *by consumers and certification by Payphone Service Providers. Each payphone service provider shall certify to the eligible telecommunications carrier providing service to the payphone line, prior to the initiation of service on a payphone line qualifying for support hereunder, that the line will be used to provide payphone service.* Consumers qualifying under an income-based criterion must present documentation of their household income prior to enrollment in Lifeline.

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state certification procedures to document consumer income-based eligibility for Lifeline prior to that consumer's enrollment if the consumer is qualifying under an income-based criterion.

(2) By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement certification procedures to document consumer-income-based eligibility for Lifeline prior to that consumer's enrollment if the consumer is qualifying under the income-based criterion specified in Sec. 54.409(b). Acceptable documentation of income eligibility includes the prior year's state, federal, or tribal tax return, current income statement from an employer or paycheck stub, a Social Security statement of benefits, a Veterans Administration statement of benefits, a retirement/pension statement of benefits, an Unemployment/Workmen's Compensation statement of benefits, federal or tribal notice letter of participation in General Assistance, a divorce decree, child support, or other official document. If the consumer presents documentation of income that does not cover a full year, such as current pay stubs, the consumer must present three consecutive months worth of the same types of document within that calendar year.

(b) Self-certifications. After income certification procedures are implemented, eligible telecommunications carriers, ***payphone service providers,*** and consumers are required to make certain self-certifications, under penalty of perjury, relating to the Lifeline program. Eligible telecommunications carriers must retain records of their self-certifications and those made by ***payphone service providers and*** consumers.

(1) An officer of the eligible telecommunications carrier in a state that mandates state Lifeline support must certify that the eligible telecommunications carrier is in compliance with state Lifeline income certification procedures and that, to the best of his/her

[[Page 132]]

knowledge, documentation of income was presented.

(2) An officer of the eligible telecommunications carrier in a state that does not mandate state Lifeline support must certify that the eligible telecommunications carrier has procedures in place to review income documentation and that, to the best of his/her knowledge, the carrier was presented with documentation of the consumer's household income.

(3) Consumers qualifying for Lifeline under an income-based criterion must certify the number of individuals in their households on the document required in Sec. 54.409(d).

(c) Verification of Continued Eligibility. Consumers ***and payphone service providers*** qualifying for
Lifeline may be required to verify continued eligibility on an annual basis. ***Payphone service providers shall supply verification on an annual basis that the payphone line receiving Lifeline support is being used to provide payphone service.***

(1) By one year from the effective date of these rules, eligible telecommunications carriers in states that mandate state Lifeline support must comply with state verification procedures to validate consumers' continued eligibility for Lifeline. The eligible telecommunications carrier must be able to document that it is complying with state regulations and verification requirements.

(2) By one year from the effective date of these rules, eligible telecommunications carriers in states that do not mandate state Lifeline support must implement procedures to verify annually the continued eligibility of a statistically valid random sample of their Lifeline subscribers. Eligible telecommunications carriers may verify directly with a state that particular subscribers continue to be eligible by virtue of participation in a qualifying program or income level. To the extent eligible telecommunications carriers cannot obtain the necessary information from the state, they may survey subscribers directly and provide the results of the sample to the Administrator. Subscribers who are subject to this verification and qualify under program-based eligibility criteria must prove their continued eligibility by presenting in person or sending a copy of their Lifeline-qualifying public assistance card and self-certifying, under penalty of perjury, that they continue to participate in the Lifeline-qualifying public assistance program. Subscribers who are subject to this verification and qualify under the income-based eligibility criteria must prove their continued eligibility by presenting current income documentation consistent with the income-certification process in Sec. 54.410(a)(2). These subscribers must also self-certify, under penalty of perjury, the number of individuals in their household and that the documentation presented accurately represents their annual household income. An officer of the eligible telecommunications carrier must certify, under penalty of perjury, that the company has income verification procedures in place and that, to the best of his or her knowledge, the company was presented with corroborating documentation. The eligible

telecommunications carrier must retain records of these certifications.